IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5031 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHRI ABDUL RAZAK AHMED SHEKH - Petitioner(s)
Versus
THE STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MR ANSHIN H DESAI for Petitioner(s) : 1,
MS ARCHNA RAWAL, AGP, for Respondent(s) : 1-4
MR HRIDAY BUCH for Respondent(s) : 2,
MR PREMAL R JOSHI for Respondent(s) : 3,
MR RM CHHAYA for Respondent(s) : 5,
MR NP NANAVATI for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 13/12/2006
ORAL JUDGMENT

(1) This petition was filed making the following prayers:

> “12. Looking at the above stated facts and circumstances of the case, the petitioner above-named most respectfully prays as under:-
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> A) Your Lordships may be pleased to admit this petition;

B) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the order at Annexure'A' dtd. 24-6-96 passed by the Deputy Secretary, Urban Development and Urban Housing department in Revision No.22/92;

C) Your Lordships may be pleased to issue a writ of mandamus or a writ the nature of mandamus or any other appropriate writ, order or direction directing the Resp. No.3 Municipality to grant the lands in question only after following the process as contemplated u/s. 65 of the Act and may be further pleased to restrain the resp. No.2 from in any manner disposing of the lands in question;

D) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the implementation, operation and or execution of the impugned order at Annexure-'A' and be further pleased to direct the Resp. No.3 Municipality to protect the historical monument “Rang”.

E) Your Lordships may be pleased to grant such other and further reliefs deemed fit, just and proper in the interest of justice”

Thereafter, the petition came to be amended vide permission granted by order dated 06.07.2006 and following additional prayer was made:

“12(CC) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate

> writ, order or direction, by directing the respondent No.3 (now Junagadh Municipal Corporation) to restore the position of land in question and cancel the sale deed dated 27.8.2004 and be pleased to issue notice of contempt against respondent No.2 and hold respondent No.2 guilty of contempt of the order dated 22.2.1999 passed in S.C.A. No.5031 of 1996."

(2) The petition challenges order dated 24.06.1996 made by the revisional authority under Section 264 of the Gujarat Municipalities Act, 1963 (the Municipalities Act) whereunder the order dated 25.02.1992 made by the District Collector, Junagadh was quashed and set aside while confirming the resolution dated 23.11.1991 made by respondent No.3-Nagarpalika. It is the say of the petitioner that respondent No.2 herein, a Sitting Municipal Councillor, has been unduly favoured by respondent No.3 while allotting the disputed land on lease. That the entire process of granting the lease by respondent No.3 is against the settled legal position and though the petitioner was an interested person, without any publicity, the plot of land has been leased out to respondent No.2. That this has resulted in detriment of the interest of respondent No.3-Nagarpalika. According to the learned advocate,

provisions of Section 65 of the Municipalities Act prohibit alienation of the municipal property without following due process of law and same is the position under the Bombay Provincial Municipal Corporation Act by virtue of Section 79(d) of the said Act. He has placed reliance on the following 14 decisions:

(i) Bhagubhai H. Devani Vs. Porbandar Municipality & Ors., AIR 1984 Gujarat 134;

(ii) Haji T. M. Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 SC 157;

(iii) Bhupal Anna Vibhute Vs. Collector of Kolhapur & Ors., AIR 1996 Bombay 314;

(iv) Rajubaben Dadbhai Kahor Charitable Trust & Ors. Vs. State of Gujarat & Ors., 2004(1) GLR 353;

(v) Kanchanbhai Kanbhai Tadvi & Anr. Vs. Municipal Corporation of the City of Vadodara & Ors., 2002(1) G.L.H. 790;

(vi) Bipinchandra P. Patel & Anr. Vs. Anand Area Development Authority & Ors., 2001(4) G.L.R. 3265;

(vii) M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors., (1999) 6 SCC 464;

(viii) Common Cause, A Registered Society Vs. Union of India & Ors., (1996) 6 SCC 530;

(ix) Ram & Shyam Company Vs. State of Haryana & Ors., (1985) 3 SCC 267;

(x) Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia & Ors. (2004) 2 SCC 65;

(xi) Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation & Ors., (1993) 2 SCC 279;

(xii) Saiyed Iqbal Vs. Ahmedabad Municipal Corporation & Ors., 2001(4) GLR 3380;

(xiii) In the case of Umiyashanker Gaurishanker & Anr. Vs. Una Municipality & Ors. rendered in Special Civil Application No.758 of 1989 on 05.12.1995; AND

(xiv) In the case of Vaghela Chhotalal Popatlal & Anr. Vs. State of Gujarat & Ors. rendered in Special Civil Application No.2620 of 2004 on 18.08.2005.

(3) According to the petitioner, he had made an application some time in 1990 for purchasing land admeasuring 95 sq. yards and for this purpose respondent No.3-Municipality had published a notification inviting objections on 02.05.1990. However, without taking any further steps in pursuance of the said notification, upon an application made by respondent No.2 the Municipality granted the application made by respondent No.2 and leased out the land, which is adjacent to the property already held by the petitioner, despite the fact that the

application moved by the petitioner was pending. He, therefore, urged that the transaction in question between respondent No.3-Municipality and respondent No.2, was required to be quashed and set aside and the entire process of either leasing out the property or selling the same had to be conducted in a transparent and open manner by inviting open offers from general public, and if necessary, after conducting public auction.

(4) It appears that on 22.02.1999, when Rule was issued by this Court, interim relief in following terms was granted:

> "2. During pendency of the petition, the respondent No.2 shall not transfer, alienate or dispose of his interest in the land in question nor shall respondent No.2 part with possession of the land in question in favour of any other party, respondent No.2 shall not put up any further additional construction.
>
> 3. Liberty to apply in case of any difficulty."

(5) Thereafter, according to the petitioner, because respondent No.3, who had by then become a Municipal Corporation, sold off the land to respondent

No.2. There was clear, deliberate, intentional breach of order made by this Court and, therefore, sale in favour of Smt. Damayantiben Shelarbhai Vank, mother of respondent No.2, was required to be quashed and set aside as per prayer Clause 12(CC) restoring the possession of the land in question.

(6) On the basis of the aforesaid amendment which came to be granted by this Court, it was submitted that this subsequent act on the part of the respondent-Municipal Corporation established that the transaction between the parties was not in the interest of the Corporation, a public body, and hence, the same was required to be struck down.

(7) In support of the principal contention that the transaction was not above board it was submitted that the resolution made by the Municipality was challenged by the petitioner before the District Collector who, vide order dated 12.05.1992, had restrained the Municipality from alienating the land in question without fixing an upset price and without issuing wide publicity by way of advertisements in

local newspapers. That the said order was challenged by way of Revision Application No.22 of 1996 by respondent No.2 herein but the petitioner was not joined as the party and, therefore, the order dated 24.12.1992, made in the revision petition, was challenged by the petitioner before this Court vide Special Civil Application No.600 of 1993. That vide order dated 23.12.1994 this Court had quashed and set aside order dated 24.12.1992 and restored the revision application to the file of the revisional authority for granting an opportunity of hearing to the petitioner before passing any final order. He, therefore, urged that the aforesaid facts would establish the bias shown by the Municipality/Municipal Corporation in favour of respondent No.2 and against the petitioner.

(8) A further contention was raised to the effect that in the impugned order dated 24.06.1996, though the revisional authority granted a hearing to the petitioner, it has not assigned any reason as to why the revisional authority is not agreeing with the order

made by the District Collector on 12.05.1992 which was in accordance with the settled legal position. An incidental submission was also made that the resolution dated 23.11.1991 was not confirmed by the general body because the resolution dated 28.01.1993, stated to be resolution of the general body, was based on the earlier order of the revisional authority made on 24.12.1992 and there was absence of any ratification of the resolution by the general body after the subsequent order. That once the order dated 24.12.1992 had been set aside by this Court, any ratification on the basis of such an order was bad in law and, therefore, in eyes of law, there was no ratification of resolution dated 23.11.1991 which itself would go to show that there was no valid lease of land in favour of respondent No.2.

(9) Mr.H.C. Buch, learned advocate appearing on behalf of respondent No.2, submitted that provisions of Section 65(2) of the Municipalities Act were satisfied and as laid down by the Apex Court in the case of Netai Bag & Ors. Vs. State of W.B. & Ors., (2000) 8

SCC 262, it was not necessary that in each and every case an alienation of the property made by a public body should be set aside, if there was no public advertisement. That apart from that, in the facts of the present case, the grievance of the petitioner was not well-founded considering the fact that on 09.08.1991 a notification was published by the Municipality which invited for the objections within a period of 15 days from the date of publication of the notification. That the notification was also affixed in presence of panchas at the site. He, therefore, urged that the respondent-Municipality had, at the relevant point of time, taken all appropriate steps in accordance with law and as per the procedure adopted by the Municipality in all such cases. In so far as the allegations regarding bias and favouritism are concerned, it was submitted that in absence of any pleadings in this regard the same need not to be considered. That in the alternative, considering the public notification inviting objections and the fact that only the land adjacent to the existing land occupied by respondent No.2 was claimed by respondent No.2, no

prejudice was shown to have been caused to the petitioner considering the fact that the land in question was not adjacent to the land of the petitioner.

(10) Mr. Premal Joshi, learned advocate appearing on behalf of respondent No.3-Municipal Corporation, submitted that the entire case of the petitioner was founded on the erroneous premise that the property in question had been alienated for an amount which was not the market value of the property; in other words, the lease rent was not in accordance with market conditions. That the same was an incorrect proposition considering the fact that the lease rent fixed by resolution dated 23.11.1991 was not approved by the general body when it resolved to ratify the said resolution on 28.01.1993 and the same was duly modified to bring it in tune with the market value. In so far as the subsequent sale of land in favour of mother of the petitioner is concerned, it was submitted that the Municipal Corporation had disposed off the property in line with the valution fixed by the Valuation Committee and, therefore, on this count also, there was no ground to interfere.

(11) In rejoinder Mr. Desai submitted that the fact that respondent No.2 was the Municipal Councillor at the relevant point of time has not been disputed either by respondent No.2 or respondent No.3. That there was no distinction under Section 65 of the Act in relation to either letting out the property or selling out the property and hence, all the principles which would apply to sale of a property outright would be applicable to leasing of the property.

(12) As can be seen from the facts of the case, the petition, after the amendment granted on 06.07.2006, is effectively in two parts in relation to different transactions, though qua same property. In the impugned order dated 24.06.1996 the revisional authority has recorded that the petitioner could not remain present before the revisional authority due to ill-health and was represented by his younger brother, Shri Shabbir Shaikh, who has placed on record written submissions dated 10.06.1996 duly signed by the petitioner. It is recorded that Shri Shabbir Shaikh has stated that everything that was required to be

stated by the petitioner has been stated in the written submissions dated 10.06.1996 and nothing further is required to be stated. The revisional authority further records that respondent No.2 has pointed out that the land in question is not adjacent to the land belonging to the petitioner and this has been demonstrated from the map produced before the revisional authority. The revisional authority records that this fact has been accepted by Shri Shabbirbhai Shaikh. That after notification dated 09.08.1991 nobody has come forth to raise any objection. That the land in question is not adjacent to the property of the petitioner but is at a tangent and in the circumstances, taking into consideration the merits of the respective claims, the revisional authority has approved the resolution dated 23.11.1991 as ratified by the general body on 28.01.1993.

(13) In light of the aforesaid findings of fact recorded on the basis of evidence on record in exercise of powers under Article 226 and/or 227 of the Constitution, it is apparent that there is no jurisdictional error

committed by the revisional authority, nor is it possible to state that the order suffers from vice of perversity. It is equally well settled that merely because on the same set of facts and circumstances the High Court may be in a position to record a different finding, that by itself is not sufficient to invest the High Court with jurisdiction under Article 226 and/or 227 of the Constitution, if the view adopted by the subordinate authority is otherwise a view possible in light of the factual matrix. Therefore, even on this count, the impugned order does not require to be interfered with.

(14) However, to satisfy the conscience of the Court, the Court has taken into consideration the following facts which emerge from the record. It is an admitted fact that upon the application moved by respondent No.2 seeking lease of land admeasuring approximately 286 sq. ft., public notification came to be published by the Municipality on 09.08.1991 inviting objections and no objections as such were received despite the fact that a copy of notification was also affixed at the site in

presence of the panchas. At this stage, learned advocate for the petitioner raises an objection that there was no publication of the notification and that this fact has been raised by way of a proposition as part of the submission. The learned advocate may be right to the extent of submitting that this was raised as one of the contentions, but, in absence of any evidence to the said effect, the Court is required to proceed on the footing that all acts done by a public body in its official capacity, are done as required by law in absence of any evidence to the contrary. That pursuant to the said notification the Managing Committee passed resolution No.261 on 23.11.1991 and vide Condition No.5, it was specified that the land was leased out for a period of eight years. The general body has ratified the same after modifying the figure of lease rent vide resolution dated 23.08.1993.

(15) In the circumstances, it is not possible to accept the contention raised by the petitioner that the land in question was alienated by respondent No.3-Municipality without following due procedure of law

only because respondent No.2 was a Municipal Councillor at the relevant point of time.

(16) In so far as the second limb of the petition is concerned, the facts are not in dispute. Vide notification dated 07.08.2004 Municipal Corporation wrote to respondent No.2 that the claim made by respondent No.2 for purchasing the land admeasuring 26.60 sq. mtrs. may be sold to respondent No.2 provided respondent No.2 is ready and willing to make payment of a sum of Rs.5,85,200/- which was arrived at by the Valuation Committee considering the rate of land at Rs.22,000/- per sq. mtr. That the said amount was duly paid followed up by an affidavit dated 16.08.2004 whereunder respondent No.2 had stated that the said property may be sold and the deed executed in the name of his mother Smt. Damayantiben Shelarbhai Vank, for which he would have no objection. Accordingly, vide a registered deed dated 27.08.2004 the land was sold and the sale deed executed in favour of Smt. Damayantiben Shelarbhai Vank.

(17) The contention that this sale amounted to violation of the order dated 22.02.1999 does not merit acceptance. As can be seen from the said order respondent No.2 was prevented from transferring, alienating or disposing off his interest in the land in question, or parting with possession of the land in question in favour of any other party. The aforesaid sale is not in any manner being affected by respondent No.2, but is a sale by the Municipal Corporation in favour of respondent No.2. Therefore, it cannot be stated that respondent No.2 had violated any of the terms. As already recorded hereinbefore, the consideration for the sale has been paid by respondent No.2 to the Municipal Corporation with a request to execute the sale deed in the name of his mother. Therefore, there is no transfer or alienation by respondent No.2 in favour of any third party. Even otherwise, there is nothing on record to show that the lease which was granted in 1991 for a period of eight years continued till the point of time the sale was made. As per Condition No.5 of Resolution dated 23.11.1991, the lease would have concluded at the end of eight years from the said date.

(18) At this juncture, the learned advocate for the petitioner sought to contend that the lease would be effective only from 1996 i.e. 24.06.1996, namely, the date on which the revisional authority passed the impugned order. This contention requires to be stated to be rejected. The revisional authority has not granted the lease of land. It has merely confirmed the order made by respondent No.3-Municipality and upon such confirmation, the transaction relates back to the date on which it was entered into between the parties, namely, 23.11.1991. Therefore, considering from any angle, there is no violation of the interim order made by this Court.

(19) In the aforesaid set of facts and circumstances, it is not possible to grant any relief as prayed for vide prayer clause 12(CC). The entire case is built on the erroneous premise that respondent No.2 has disposed off his interest in favour of his mother Smt. Damayantiben Shelarbhai Vank, which as already noticed hereinbefore, is an incorrect proposition.

(20) Therefore, for the reasons stated hereinbefore, the petition does not merit acceptance on any of the grounds pleaded and is, accordingly, rejected. RULE discharged. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*